

PT 98-29

Tax Type: PROPERTY TAX

Issue: Government Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

VILLAGE OF SHOREWOOD)		
Applicant)		
)	Docket #	95-99-246
v.)		
)	Parcel Index #	06-16-102-020
THE DEPARTMENT OF REVENUE)		(Part of)
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. David J. Silverman appeared on behalf of the Village of Shorewood.

Synopsis:

The hearing in this matter was held on April 7, 1997, at 100 West Randolph Street, Chicago, Illinois, to determine whether or not part of Will County Parcel Index No. 06-16-102-020, as legally described on Exhibit A attached to this recommendation, qualified for exemption for the 1995 assessment year.

Mr. Gary C. Holmes, village administrator for the Village of Shorewood (hereinafter referred to as the "Village") was present and testified on behalf of the Village.

The issues in this matter include, first, whether an easement to the Village, as legally described on Exhibit A, which provided access to and was improved with an elevated water tower owned by the Village located on an underlying parcel owned by a nonexempt owner, qualifies for exemption. The second issue is whether the taxation of such a public easement and

Village owned water tower is an exemption issue or an assessment issue. Following the submission of all of the evidence and a review of the record, it is determined that an easement to the Village providing access and improved with an elevated water tower owned by the Village, located on an underlying parcel owned by a nonexempt owner, does not qualify for exemption from real estate tax. It is also determined that the taxation of such a public easement and Village owned water tower is an assessment issue. It is therefore recommended that this parcel index number remain on the assessment books of Will County in the name of the nonexempt owner of the parcel for the 1995 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that part of the parcel legally described on Exhibit A did not qualify for exemption for the 1995 assessment year, was established by the admission in evidence of Department's Exhibit Nos. 1 through 5A.

2. On January 31, 1996, the Will County Board of Review transmitted to the Department an Application for Property Tax Exemption To Board of Review, which had been filed by the Village with the Board on December 29, 1995. This application concerns the portion of Will County Parcel Index No. 06-16-102-020 as legally described on Exhibit A which is subject to the easement to the Village. (Dept. Ex. No. 1)

3. On March 28, 1996, the Department notified the Village that it was denying the exemption of the easement portion of this parcel because the statutes do not provide for the exemption of an easement. (Dept. Ex. No. 2)

4. By a letter dated April 12, 1996, the attorney for the Village requested a formal hearing in this matter. (Dept. Ex. No. 3)

5. The hearing in this matter, conducted on April 7, 1997, was held pursuant to that request.

6. On November 8, 1984, Central States Realty & Development, Inc. granted an easement on property legally described on Exhibit A to the Will County Water Company. That easement agreement provides for an access easement to install, construct, renew, repair, operate, and maintain on the easement property, a 100,000 gallon elevated water storage tank. (Appl. Ex. No. 1)

7. The parcel of land over which the easement was granted is now a part of the land that is held in trust by First National Bank of Joliet Trust No. 3146. (Dept. Ex. No. 3F)

8. That land trust was later amended making Kovacevich Enterprises, Inc. the holder of the beneficial interest therein. (Dept. Ex. No. 3F)

9. On June 28, 1988, the Village purchased the assets of and received a bill of sale from the Will County Water Company. The purchase included the elevated water storage tank, the easement area where the water storage tank was located, and the access easement. (Tr. p. 13, Dept. Ex. No. 1C)

10. The exhibits in this record include an agreed court order in Will County Docket No. 92 TX 16250 which concerned the parcel index number which is here in issue. The Court, in that case, ordered a reduction in the tax on the land included in the underlying parcel in the amount of \$1,000. The Court also ordered a reduction in the tax on the building on the parcel to zero for the 1991 assessment year. The cover letter from the State's Attorneys Office to the Supervisor of Assessments recites that the only building on this parcel during the 1991 assessment year was the water tower. The water tower is located on the easement belonging to the Village. (Dept. Ex. Nos. 1A & 1B)

11. During all of the 1995 assessment year, I find that Will County Parcel Index No. 06-16-102-020 was owned by the First National Bank of Joliet Trust No. 3146. I further find that the beneficial interest in said land trust is owned by Kovacevich Enterprises, Inc. I also find that no allegation has been made and no evidence has been offered that the holder of the beneficial interest in the land trust qualified for exemption from real estate tax.

12. Finally, I find that during the 1995 assessment year, the Village was the owner of the elevated water tower. The Village was also the holder, during that year, of the access easement and the area of the easement where the elevated water tower was located. The parcel upon which the easement is located is legally described on Exhibit A, which is part of Will County Parcel Index No. 06-16-102-020.

Conclusions of Law:

35 **ILCS** 200/1-130 defines the terms property, real property and real estate as follows:

The land itself, with all things contained therein, and also all buildings, structures and improvements and other permanent fixtures thereon,

35 **ILCS** 200/9-145, which provides for the statutory levels of assessment, at paragraph (e) provides as follows:

(e) In the assessment of property encumbered by public easement, any depreciation occasioned by such easement shall be deducted in the valuation of such property.

The foregoing provisions of the Property Tax Code became effective on January 1, 1994. Before that time, the Revenue Act of 1939 contained similar provisions at Sections 1(13) and 20(5) respectively, which resulted in the Agreed Court Order in Will County Docket No. 92 TX 16250. That agreed order reduced the tax on the land by \$1,000. The order also reduced the tax on the water tower, the only improvement on Will County Parcel Index No. 06-16-102-020, to zero for the 1991 assessment year. The prior statute dictated a reduction in the value of the land on the 1991 tax bill as a result of the land being encumbered with the public access easement. The presence of the easement on that parcel reduced the value of the land to the non-exempt owner. Said prior statute also required a reduction in the value of the water tower to zero on the 1991 tax bill. This was done because the land is encumbered with the water tower, which is again of no value to the owner of the land.

The foregoing provision of the Property Tax Code appears to require a reduction in the value of the land as a result of the easement. This provision also required a reduction of the value of the water tower to zero on the tax bill of the owner of the land for the 1995 assessment year. Said statutory provisions, if followed by the assessor, will result in the nonexempt owner of Will County Parcel Index No. 06-16-102-020 not being required to pay real estate taxes on the easement and water tower of the Village. Since the Village does not own Will County Parcel No. 06-16-102-020, it will not be assessed on that parcel. Consequently, there is no provision for an exemption from taxation of the Village concerning the parcel at issue.

The foregoing observations concern the issue of the assessment of this parcel and are beyond the scope of the jurisdiction of this proceeding, which is a tax exemption proceeding.

In his closing argument at the hearing in this matter, the attorney for the Village alleged that the Village did not need to own the easement parcel to qualify for the exemption of the water tower. The attorney cited the case of City of Chicago v. Department of Revenue, 147 Ill.2d 484 (1992) as supporting that position. In that case, the city owned the Kraft Building which was constructed and located on property subject to a long term ground lease. The owner of the underlying land was Chicago Dock-Equitable Venture, a non-exempt owner. The City was the current lessee of that ground lease. The Kraft Building contained approximately 350,000 square feet of office space. During the year in issue, the city cable commission, department of human services, health systems agency, department of health, department of consumer services-debt counseling center, and the fire and police departments, among others, occupied portions of the Kraft Building. In City of Chicago, the Supreme Court decided that the underlying land was taxable to Chicago Dock-Equitable Venture, the nonexempt owner. The Court also found that the Kraft Building was exempt. The statutory provision which the Court relied on in reaching that conclusion is found in Section 19.6 of the "Revenue Act of 1939" which exempts certain property as follows:

. . . all public buildings belonging to any county, township, city, or incorporated town, with the ground on which the buildings are erected; . . .

The foregoing provision may also be found in the Property Tax Code in force during 1995 at 35 ILCS 200/15-60(b). It reads as follows:

Also exempt are:

(b) all public buildings belonging to any county, township, city, or incorporated town, with the ground on which the buildings are erected;

In addition to the City of Chicago case, the Illinois Supreme Court has only decided a case relying on the foregoing provision in one other case, Adams County v. City of Quincy, 130 Ill. 566 (1889). That case concerned the Adams County Court House. The Court has only applied that provision in cases where there are government buildings containing offices which are occupied by government employees and visited by members of the public. The elevated water tower in this case is clearly not such a public building. It should also be pointed out that both the "Revenue Act of 1939" provision concerning "Public Buildings" and The Property Tax Code provision concerning "Public Buildings" do not include public buildings owned by villages. Consequently, I conclude that Section 15-16(b) does not apply to the facts in this case and the City of Chicago case is distinguishable.

The remaining provisions of Section 15-60, as they apply to cities or villages, require that the city or village own the land. Since the Village does not own the land in question, but only has an easement, it does not qualify for exemption.

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

35 ILCS 200/15-60, in relevant part reads as follows:

All property owned by any city or village outside of its corporate limits is exempt if used exclusively for municipal or public purposes. (Emphasis supplied)

In view of the fact that the Village does not own the portion of this parcel legally described on Exhibit A but has an easement over privately owned non-exempt property for

access and the location of the Village owned water tower, it does not qualify for a property tax exemption.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986).

I therefore recommend that Will County Parcel Index No. 06-16-102-020 remain on the tax rolls for the 1995 assessment year and that said parcel continue to be assessed to the owner thereof.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
March 27, 1998

EXHIBIT A

Legal Description of Parcel Index No. 06-16-102-020 (Part of)

Village of Shorewood Easement

The east 5.00 feet of the west 1/2 of the northwest 1/4 described as follows: beginning at the southeast corner of the said west 1/2 of the northwest 1/4, thence northerly along the east line of the said west 1/2 of the northwest 1/4, which is also the west line of said Lot 27, to a point on the said east line of the west 1/2 of the northwest 1/4 that is 33.00 feet northerly of the northwest corner of said Lot 27, thence westerly along a line 33.00 feet north of and parallel to the north line of said Lot 27 extended westerly to a point that is 5.00 feet, measured perpendicular to the said east line of the west 1/2 of the northwest 1/4, thence southerly along a line 5.00 feet west of and parallel to the said east line of the west 1/2 of the northwest 1/2 to the south line of the said west 1/2 of the northwest 1/4, thence easterly along the said south line of the west 1/2 of the northwest 1/4 to the point of beginning, all in Troy Township, Will County Illinois.